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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. EDWARD JOE BONILLA, Defendant and Appellant.	E046614 (Super.Ct.No. RIF120892 & RIF119920) **OPINION**

APPEAL from the Superior Court of Riverside County. Thomas H. Cahraman, Judge. Affirmed with directions.

Steven S. Lubliner, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and James D. Dutton and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

This is an appeal after defendant Edward Joe Bonilla entered a guilty plea in two consolidated cases (Riverside County Superior Court case Nos. RIF119920 & RIF120892). On September 23, 2004, defendant's apartment was under surveillance based on suspicions he was selling drugs. It was reported to officers that he kept the drugs in a magnetic metal box hidden underneath his truck. On that day, Riverside County sheriff's deputies followed defendant to a known drug-trafficking area where he met up with an unknown person. After witnessing what the sheriff's deputies believed to be a hand-to-hand narcotics transaction, they approached defendant's truck. After receiving defendant's consent, the truck was searched, and the metal box containing drugs was found under the truck. The officers also received consent to search defendant's apartment, where they found additional drugs.

On December 15, 2004, defendant was staying in a house rented by his sister in Riverside when Riverside police officers went to the house to execute a parole search on another occupant who they believed lived in the house. During the search, defendant was found in possession of keys that opened a locked garage containing weapons and drugs.

Defendant's motions to suppress the evidence found in his sister's house, on his truck, and in his apartment were denied. Defendant then withdrew his not guilty plea and pled guilty to the trial court on 12 felony and misdemeanor counts and numerous enhancements. Defendant now contends:

1. The trial court erred by refusing to suppress evidence seized at the house located at 4975 Central Avenue in Riverside, requiring reversal of his guilty plea on counts 1 through 4.

2. The trial court erred by refusing to suppress evidence seized from defendant's car and apartment, requiring reversal of his guilty plea on counts 8, 9, 10, and 12.

3. The agreed upon on-bail enhancement should be stayed.

We find the trial court did not err by denying defendant's motions to suppress evidence. As for the on-bail enhancement, since defendant did not obtain a certificate of probable cause (Pen. Code, § 1237.5), he cannot raise this issue on appeal. As we note, *post*, the abstract of judgment and minute order from the date of sentencing do not reflect the orally imposed sentence, and we will order the trial court to amend the minute order and prepare and forward a new abstract of judgment to the Department of Corrections and Rehabilitation.

I

PROCEDURAL BACKGROUND

On January 17, 2006, an amended information was filed by the Riverside County District Attorney's Office against defendant in case No. RIF120892, which involved items seized during the search of the house located on Central Avenue in Riverside on December 15, 2004.[1] Counts 1 and 2 charged defendant with possession of

[1] Defendant was charged with a codefendant, Jennifer Salcido, who is not a subject of this appeal.

methamphetamine (Health & Saf. Code, § 11378) and marijuana (Health & Saf. Code, § 11359); count 3 charged him with possession of counterfeit currency (Pen. Code, § 476); and count 4 with being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)). It was further alleged that defendant was on bail when he committed the four above mentioned offenses. (§ 12022.1.) It was also alleged as to counts 1 and 4, that defendant had a prior drug conviction. (Health & Saf. Code, § 11370.2, subd. (c).) Finally, it was alleged as to all four counts that he had served six prior prison terms (Pen. Code, § 667.5, subd. (b)) and had suffered two prior serious or violent felony convictions (Pen. Code, §§ 667, subds. (c)-(e)(1), 1170.12, subd. (c)(1)).

On March 24, 2006, the Riverside County District Attorney's Office filed an information in case No. RIF119920. Defendant was charged with possession of methamphetamine (Health & Saf. Code, § 11378; count 1), heroin possession (Health & Saf. Code, § 11350, subd. (a); count 2), unlawful possession of firearms (Pen. Code, § 12316; count 3), and misdemeanor possession of drug paraphernalia (Bus. & Prof. Code, § 4140; count 7). These crimes were a result of a voluntary search of defendant's apartment on Jackson Street in Riverside executed on August 28, 2004.

The remaining counts in case No. RIF119920 involved crimes related to the search of defendant's truck at the Tyler Lounge in Riverside and a subsequent second search of his Jackson Street apartment occurring on September 23, 2004. These counts included one count of possession of methamphetamine for sale (Health & Saf. Code, § 11378; count 4); one count of transportation of methamphetamine for sale (Health & Saf. Code,

§ 11379 subd. (a); count 5); misdemeanor possession of Clonazepam (Health & Saf. Code, § 11375, subd. (b)(2); count 6); and misdemeanor possession of marijuana (Health & Saf. Code, § 11357, subd. (b); count 8). It was alleged as to counts 1 through 5 that defendant was on bail at the time of the offenses. (Pen. Code, § 12022.1.) It was alleged as to counts 1, 4, and 5, that he had a prior drug conviction. (Health & Saf. Code, § 11370.2). Finally, it was alleged as to all the felony counts that he had served six prior prison terms (Pen. Code, § 667.5, subd. (b)) and suffered two prior serious or violent felony convictions (§ 667, subds. (c)-(e)(1), 1170.12, subd. (c)(1)).

The People brought a motion to consolidate the cases. The motion was granted, and the cases were consolidated under case No. RIF120892. The four counts from case No. RIF120892 became counts 1 through 4, and the eight counts from case No. RIF119920 became counts 5 through 12.

After the trial court denied defendant's motions to suppress the evidence against him, he agreed to plead to the trial court for a sentence of 20 years. In return, the trial court would strike one of the prior convictions. Defendant then pled guilty to all nine felony counts. Defendant also admitted the allegation that he was on bail from a primary offense during the commission of counts 1 through 9. He also admitted that he had served six prior prison terms and suffered two prior serious or violent felony convictions. In addition defendant pled guilty to the three misdemeanor offenses.[2]

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[2] The People objected to the plea.

At sentencing, the trial court granted defendant's *Romero*[3] motion to strike one of the prior convictions. The trial court then sentenced defendant to 20 years in state prison. The sentence consisted of, on count 9, the principal term, four years, doubled for the one strike, for a total of eight years, plus three years for the Health and Safety Code section 11370.2, subdivision (c) prior drug offense, plus two years for the on-bail enhancement, plus five years for five of the prison term priors, for a total of 18 years. The trial court then imposed a consecutive sentence of two years on count 2. Sentence on the remaining offenses and enhancements were ordered to run concurrent to counts 2 and 9.[4]

II

FACTUAL BACKGROUND[5]

On August 28, 2004, at 3:30 a.m., Riverside Police Officer Dan Warren went to 5948 Jackson Street in Riverside where defendant lived. Officer Warren was given the key to the apartment by defendant. Inside the bedroom, nine-millimeter ammunition was found. Three glass jars were also found that contained methamphetamine residue and there were scales, baggies, and money in the room. Inside a safe, officers found approximately eight grams of methamphetamine, 1.4 grams of heroin, and 12 ounces of

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[3] *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497.

[4] The trial court struck one of the prison term priors admitted pursuant to Penal Code section 667.5, subdivision (b).

[5] Since defendant pled guilty, we only provide a brief summary of facts obtained from the preliminary hearing in both cases.

marijuana. A large amount of money was found in the safe and in defendant's wallet. The methamphetamine was a useable quantity.[6]

On September 23, 2004, Riverside County Sheriff's Investigator Kevin Dorrough stopped defendant after he observed him engage in what he thought was a hand-to-hand drug transaction. Inside a metal box attached to defendant's truck, Investigator Dorrough found 55 grams of methamphetamine. Investigator Dorrough then accompanied defendant to his apartment located on Jackson Street, where deputies found more methamphetamine, marijuana, the drug Clonazepam, and a digital scale. Investigator Dorrough surmised the methamphetamine was possessed for sale.

On December 15, 2004, Riverside Police Investigator Matthew Lackey went to 4975 Central Avenue to conduct a parole search. Defendant was inside the house, and keys were found in his possession that unlocked a detached garage at the location. Inside the garage, Investigator Lackey found one ounce of methamphetamine, 15 grams of marijuana, a .25-caliber handgun, a shotgun, items used to weigh and package drugs, counterfeit bills, and several items bearing defendant's name. There was also a security camera. Counterfeit money was found on defendant's person. The amounts of methamphetamine and marijuana were a sufficient quantity for sale.

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[6] Defendant did not bring a motion to suppress this evidence.

III

MOTION TO SUPPRESS EVIDENCE SEIZED AT CENTRAL AVENUE HOUSE

Defendant contends the trial court erred by denying his motion to suppress evidence seized at the Central Avenue home. He contends the People had the burden of proving (beyond just checking the parole database) that the parolee for whom the search was initiated lived at the Central Avenue house prior to conducting the parole search, and the failure to do so requires exclusion of the evidence seized after entry into the house. The People respond that the parole search was valid, as the officers reasonably believed that a parolee lived at the premises, and the keys that unlocked the garage containing the contraband were in plain view and were found during the valid parole search.

A. *Additional Factual Background*

In defendant's written motion to suppress the items seized at the Central Avenue address, he argued that he had standing to challenge the legality of the search, the People had the burden of proving the warrantless search was valid, and the search was not justified by any exception to the warrant requirement. The People argued in their written opposition that defendant had no standing to bring the motion because he was not the owner of the property and did not have a reasonable expectation of privacy; he had lowered expectation of privacy because he had missed a court appearance that morning and knew a bench warrant would issue for him; and there was proper consent given to search the garage where the items were found.

The People called Riverside Police Lieutenant Guy Toussaint in support of the search at the hearing on the motion. Lieutenant Toussaint became interested in the home located on 4975 Central Avenue in Riverside because there were reports of criminal activity at the location. Lieutenant Toussaint called the Riverside parole department and asked for the officer of the day; he did not recall with whom he spoke, and there were no written records of the conversation. Lieutenant Toussaint asked the officer of the day to run a check on the home to determine whether there was anyone on active parole at the location. Lieutenant Toussaint was informed that Obie Combs lived at the location and was on active parole. Lieutenant Toussaint believed, based on his experience, that the officer of the day would have used a computer database to check the address. The database could check by an individual's name or by an address.

Investigator Lackey went to the Central Avenue address on Lieutenant Toussaint's behest on December 15, 2004, to conduct the parole search on Combs. Investigator Lackey had a description of Combs and a photograph.

Investigator Lackey knocked on the door, and Gloria Bonilla, defendant's sister, answered. Investigator Lackey identified himself as a police officer and advised Gloria that they were conducting an investigation and parole search of Combs. Investigator Lackey advised Gloria that Combs listed the home as his place of residence and that he was on parole with search terms. This conversation initially occurred in front of the home, but then the parties moved inside. Investigator Lackey described Gloria as cooperative but did not recall if she invited him into the house.

Gloria advised Investigator Lackey that Combs did not live at the residence and had not lived there for "some time." Investigator Lackey had been a police officer for 11 years and had done "hundreds" of parole searches. He frequently was lied to by residents that the parolee no longer lived in the home. Investigator Lackey did not believe Gloria that Combs was not living at the Central Avenue home.

Investigator Lackey's search team (which consisted of five to six officers) entered the residence. Investigator Lackey did not care about consent to enter the residence. During the search, it was discovered that defendant and Salcido were in the house, sleeping on a cot in a laundry room. Defendant was visiting Gloria and had been staying for only a couple of days.

Behind the home, there was a detached garage with a lock on the door. Gloria initially gave consent to search the garage because she indicated that she did not have anything in the garage, did not know who had put a lock on the garage, and the garage belonged to the owner of the property. She was renting the property and gave one of the officers the owner's name. The homeowner was contacted and gave permission for the lock to be cut off the garage. The homeowner kept some property in the garage but had not put the lock on it.

The key to the lock for the shed was found near defendant's belongings by Detective Carl Turner, who was part of the search team. Defendant consented to a search of his person and clothing. Nearby, defendant had some type of bag; his pants were on

the floor; and he had some property, including his wallet and keys, on the washer and dryer. Inside the shed, narcotics and firearms were found.

Combs was never found at the location, and no property belonging to him was found. No illegal contraband was found inside the house. Defendant did admit to possessing some items in the garage, but not the illegal items. No one was residing in the garage. Investigator Lackey did not know of any independent investigation as to whether Combs lived in the house other than the parole information from Lieutenant Toussaint.

Gloria testified for defendant. Gloria knew Combs, but he had not stayed at her home since 2001. Gloria believed he was living in Florida, but she did not tell that to the officers. Gloria indicated that the rent included the detached garage. She had lived in the Central Avenue house for three years and had at times put items in the garage.

Gloria claimed she told the officers there was no one on parole in the house. They responded that if she did not cooperate, she would be incarcerated. Gloria did not give the officers permission to search the garage. She thought the lock had been on the garage for two months but did not know who had put it there.

In arguing for suppression of the evidence, defendant claimed he had a reasonable expectation of privacy as an overnight guest, at least to the laundry room where he was staying. As for the garage, he conceded there was no expectation of privacy. Defendant believed that officers must have probable cause to believe that a parolee is a resident in a house in order to conduct a parole search. The trial court responded that the information given to the officers by the parole department was enough for probable cause to search

the house. The only question that remained was whether they legally could seize the keys to unlock the garage.

The People argued that defendant gave consent to search his property, and the keys were in plain sight. The trial court ruled: "I think it was just common sense once they found that the garage had a lock on it, and they learned the owner didn't put it there, and that the renter didn't put it there, and they found these keys. It would—it would have been silly for them not to see if the key fit. And they already had the keys, based on they had the right to go in there, and they saw them in plain sight. So I don't have a problem with that." The motion to suppress was denied.

B. S*tandard of Review*

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court's resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review." (*People v. Ramos* (2004) 34 Cal.4th 494, 505.) "[W]e view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.]" (*People v. Jenkins* (2000) 22 Cal.4th 900, 969; *People v. Pearl* (2009) 172 Cal.App.4th 1280, 1287 (*Pearl*).)

C. *Analysis*[7]

Defendant contends the prosecution did not meet its burden of proving that the officers were conducting a lawful parole search and that *People v. Willis* (2002) 28 Cal.4th 22 (*Willis*) requires such a showing. Since the officers were not entitled to be in the house, the contraband seized based on keys found in plain sight inside the house should have been excluded as fruit of the poisonous tree.

A search inside a home without a warrant is presumed to be unreasonable, and the burden lies on the prosecution of showing an exception to the warrant requirement made the search lawful. (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 749-750 [80 L.Ed.2d 732, 104 S.Ct. 2091].)

All parolees in California are automatically subject to the condition that his or her residence and any property may be searched without a warrant at any time by any agent of the Department of Corrections and Rehabilitation or any law enforcement officer. (Pen. Code, § 3067, subd. (a).) Further, under California law, "[w]hen involuntary search conditions are properly imposed, reasonable suspicion is [not] a prerequisite to conducting a search of the subject's person or property. Such a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing." (*People v. Reyes* (1998) 19 Cal.4th 743, 752; see also *People v. Sanders*

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[7] The People have provided only one theory on appeal that the search was valid under the Fourth Amendment: The search was justified as a valid parole search. They do not posit that Gloria consented to the search or that there was any purge of the taint (assuming the initial entry was invalid) that justified the search of the garage.

(2003) 31 Cal.4th 318, 333.) When a third party lives with a parolee, areas and items shared with the parolee are also subject to search. (*People v. Britton* (1984) 156 Cal.App.3d 689, 703, disapproved on other grounds in *People v. Williams* (1999) 20 Cal.4th 119, 134-135.)

In order to conduct a parole search at a residence, California courts have framed the issue in terms of reasonableness. (See *People v. Woods* (1999) 21 Cal.4th 668, 682 ["officers generally may only search those portions of the residence they reasonably believe the probationer has complete or joint control over"].) Further, the Supreme Court has stated that officers need only act reasonably and not with certainty in establishing facts to support an exception to the warrantless entry into a residence. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 188-189 [111 L.Ed.2d 148, 110 S.Ct. 2793] (*Illinois*).)

In *Pearl, supra,* 172 Cal.App.4th 1280, the defendant objected to several searches of his residence based on the fact he claimed his parole term had expired. At the suppression hearing, the trial court demanded evidence by the prosecution that showed the defendant was on active parole at the time of the search. (*Id.* at pp. 1286-1287.) The People presented a certified Penal Code section 969b packet that showed additional time that was added to the parole sentence. No one was called to testify regarding the notations. The trial court denied the motion to suppress evidence finding the People had met their burden that defendant was on parole during the time of the searches. (*Id*. at p. 1287.)

On appeal, the court first addressed the burden of proof of proving whether the defendant was on active parole, which it found was on the prosecution because it was an exception to the warrant requirement. (*Pearl, supra,* 172 Cal.App.4th at p. 1288.) It provided no further explanation as to the burden of proof. The court merely held that since the People failed to meet its burden of proving defendant was on active parole by failing to call witnesses to explain the entries in the Penal Code section 969b packet, the defendant's rights under the Fourth Amendment had been violated. (*Pearl,* at pp. 1291-1292.)

Pearl did not provide guidance on the proof required by the People to show, based on the knowledge of the officers at the time of entry to conduct the parole search, that such parole search was valid under the Fourth Amendment. In *Motley v. Parks* (9th Cir. 2005) 432 F.3d 1072, the court concluded that before conducting a warrantless search pursuant to a parolee's parole condition, law enforcement officers must have "probable cause to believe that the parolee is a resident of the house to be searched." It interpreted "probable cause" as "'a man of reasonable caution'" would believe, based on "'very strong facts'" known at the time, that the parolee lives at the house. (*Id*. at pp. 1079-1080.)

Certainly, we need not follow *Motley*. (*People v. Burnett* (2003) 110 Cal.App.4th 868, 882 [intermediate federal cases are not binding on state courts].) Further, this appears to conflict with the holding in *Illinois* that the showing need only be that the officers acted reasonably in entering the residence to conduct a parole search, i.e., that in

showing an exception to a warrantless entry the officers need to have only acted reasonably. (*Illinois, supra,* 497 U.S. at pp. 188-189.)

The dissent relies upon *Willis*, *supra*, 28 Cal.4th 22, and *Pearl, supra,* 172 Cal.App.4th 1280 for the proposition that to uphold the parole search the People had the burden to prove that Combs was actually on parole. However, as discussed, *ante*, *Pearl* did not adequately address the burden of proof. Further, in *Willis*, the court did not address the burden of proof because the People conceded there was no one on parole at the location searched. (*Willis,* at p. 29.) Under either standard, the evidence supported that Combs was on active parole.

Here, the evidence established that an experienced police officer contacted the Riverside parole department to determine whether there was an active parolee living at the Central Avenue address. The officer was informed that Combs, who was on parole, listed the Central Avenue home as his place of residence. Although when officers arrived at the location, Gloria denied that Combs lived at the house, she certainly could have been lying. She did admit that at one time Combs did live at the residence. Further, Investigator Lackey testified that he had conducted hundreds of parole searches and the residents oftentimes deny that the parolee lives at the location. Absolutely no other evidence rebutted that Combs lived at the location. This evidence was enough for the officers to reasonably believe that Combs lived at the location and that they could conduct a search of the property based on his parole status.

The dissent contends the People conceded that there was no admissible evidence Combs was actually on parole. We disagree. The People argued in their brief that substantial evidence supported that Combs was on active parole. Further, although at oral argument the attorney general argued that the reasonableness standard of *Illinois, supra,* 497 U.S. at pp. 188-189 applied, he never conceded that the evidence did not establish that Combs was on active parole. Moreover, to the extent the dissent's argument is based on its conclusion that the evidence supporting that Combs was on active parole was inadmissible hearsay, defendant has never made that argument on appeal. Accordingly, the evidence supporting Combs was on active parole was properly before the trial court.

"'"The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the trial court's findings.'" (*People v. Snead* (1991) 1 Cal.App.4th 380, 384.) Here, the evidence that Combs was on active parole was properly before the trial court.

Defendant relies almost exclusively on *Willis*. In *Willis*, officers checked "'department records,'" the "'local criminal justice information system'" and a two- or three-week-old "parole book" to determine whether the defendant was on parole. (*Willis, supra*, 28 Cal.4th at p. 26.) A parole officer advised the officers that the listing in the parole book confirmed that the defendant was on parole and that a search of his motel room was proper. (*Ibid*.) When defendant answered the door to his motel room, he advised the officers he was no longer on parole and provided the officers with a

certificate of discharge. (*Id*. at pp. 26-27.) Officers eventually searched the room without confirming the discharge from parole. (*Id.* at p. 27.)

On appeal to the California Supreme Court (after denial of the motion to suppress evidence by the trial court and affirmance of the denial by the Court of Appeal), the People conceded that the defendant was not actually on parole, and the officers violated the Fourth Amendment by entering the motel room. (*Willis, supra,* 28 Cal.4th at pp. 28-29.) The People argued, nonetheless, that the evidence should not have been excluded because the officers acted in good faith in relying on the information from the parole department that the defendant was on parole. (*Id.* at pp. 29-30.)

After an extensive discussion of the good faith exception, the California Supreme Court then squarely placed the burden on the prosecution of proving the good faith exception. (*Willis, supra,* 28 Cal.4th at pp 36-37.) It also concluded that since the parole department was an adjunct to the law enforcement team, the officers who conducted the search could not rely on the information in good faith. (See *id.* at pp. 38-51.)

We believe that *Willis* has no bearing on the finding of the trial court here. As opposed to *Willis,* there was no Fourth Amendment violation in this case. The evidence presented to the trial court clearly did not establish that the information relied upon by the officers was erroneous. It certainly was the People's burden to prove that they were there subject to a parole search. As stated, *ante*, the evidence established as much, and nothing in *Willis* addresses the burden of proof required to initiate a parole search. Since *Willis* and other cases before it conclusively established that the information relied upon by the

officers in conducting the parole search was erroneous, the situation in this case differs. There was no reliable evidence that Combs did not live at the residence, and the officers acted reasonably in relying on the evidence that supported that Combs was an active parolee living at the Central Avenue home. (*Illinois, supra,* 497 U.S. at pp. 188-189.)[8] Based on the foregoing, there was no Fourth Amendment violation, and therefore the officers had the right to search the residence.

The dissent contends, assuming there was no evidence supporting that Combs was on active parole, that the search was also improper under the exclusionary rule's good faith exception. The People argued in their brief that the exclusionary rule does not require exclusion of the evidence here based on the recently decided case of *Herring v. U.S.* (2009) __U.S. __ [172 L.Ed.2d 496, 129 S.Ct. 695]. However, this theory was not raised by the People in the trial court as support for admitting the evidence seized during the search. A party may not offer on appeal a theory regarding suppression of evidence that was not advanced below. (*People v. Williams* (1999) 20 Cal.4th 119, 130-131.)

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[8] The dissent cites to *In re Eskiel S.* (1993) 15 Cal.App.4th 1638, 1642-1643.That case involved an improper detention based on an officer receiving a radio broadcast about a potential suspect, but no further information regarding the source of the radio broadcast was presented in the lower court. (*Id.* at pp. 1641-1642, 1644.) This case differs from *Eskiel S.* Initially, in that case the defendant properly raised the inadmissibility of the radio broadcast in the lower court and on appeal. (*Id.* at pp. 1641-1642.) Further, in the instant case, Lieutenant Touissant spoke with an officer of the day at the parole department and also explained that the process used by the parole department in looking up the information, based on his experience, was to check a parole datebase. Finally, another court has criticized the finding in *Eskiel S.* (See *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1260 [faulted *Ezkiel S.* court for not considering the broadcast was corroborated].)

Thus, although the dissent concludes that the exception does not apply, we believe any discussion of the good faith exception is superfluous.

Defendant has not argued on appeal that the scope of the search was improper. Accordingly, the fact that during a valid parole search the officers found keys in plain sight that fit a lock to the garage where the contraband was found need not have been suppressed. The trial court did not abuse its discretion by denying defendant's motion to suppress the evidence found at the Central Avenue location.

IV

MOTION TO SUPPRESS EVIDENCE SEIZED FROM DEFENDANT'S TRUCK AND APARTMENT

Defendant additionally contends the trial court erred by refusing his motion to suppress evidence seized from his truck and apartment.

A. *Additional Factual Background*

Defendant also brought a written motion to suppress the items found in a metal box attached to his truck and the subsequent search of his apartment. Defendant argued the contact between him and the sheriff's deputies constituted a detention; there was no reasonable suspicion that criminal activity was afoot to justify the detention; and defendant did not consent to the search of his truck or his apartment. The People filed opposition. In their opposition, they argued that the contact with defendant was not a detention but a consensual encounter; the sheriff's deputies had reasonable suspicion that criminal activity was afoot to warrant detaining defendant; since the detention was valid,

defendant's consent to search his truck was valid; and consent given by defendant to search his apartment was freely given.

At the hearing on the motion, Investigator Dorrough testified that he was assigned to a special task force on street-level narcotics sales. He had handled "hundreds" of hand-to-hand narcotics sales. Investigator Dorrough was familiar with the area of Tyler Lounge in Riverside, which was a known drug trafficking area.

On September 23, 2004, Investigator Dorrough was conducting surveillance at 3948 Jackson in Riverside with Investigator Fred Collazo. Investigator Dorrough had received a tip from an informant that defendant was selling methamphetamine from the location. The informant advised Investigator Dorrough about one week before that defendant stored the narcotics in a magnetic box, that was described as a "yellow Dewalt tool holder" that was hollowed out. The magnetic box was stored underneath defendant's vehicle (a Toyota 4Runner) for transporting. Investigators Dorrough and Collazo were both dressed in plain clothes, and they had badges around their necks. They were in an unmarked patrol car.

At approximately 8:30 p.m., defendant was seen leaving the apartment, getting into the Toyota 4Runner, and driving to the parking lot of the Tyler Lounge.[9] There was only one other vehicle in the parking lot near where defendant parked. One person got out of that vehicle and approached the passenger side of defendant's truck. The

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[9] Investigator Dorrough could not tell if defendant was carrying anything when he exited his apartment.

unidentified person opened the door and stuck his head in the passenger side. Based on the informant's information and his own training and experience, Investigator Dorrough believed he was witnessing a narcotics transaction.

Both Investigators Dorrough and Collazo approached defendant's truck. They announced, "Sherriff's Department." The person who had been speaking with defendant through the passenger side door immediately ran back to his vehicle, and the vehicle sped away.[10] This solidified Investigator Dorrough's opinion that this had been a narcotics transaction. Investigator Dorrough did tell defendant that he wanted to talk to him.

Defendant stepped out of his truck (without being ordered out), and Investigator Dorrough advised him that they were conducting a narcotics investigation. Defendant said he had nothing in his truck and that he was "'not into that anymore.'" When asked by Investigator Dorrough whether he could search his truck, defendant responded, "'Go ahead. You won't find anything.'" This all occurred within about 30 seconds. Prior to this, defendant was never told he was not free to leave and was not handcuffed, and although both Investigators Dorrough and Collazo were armed, they did not pull out their guns and point them at defendant. Investigator Dorrough may have had his hand on his weapon, but he did not pull it out of its holster.

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[10] Other members of Investigator Dorrough's team attempted to stop the vehicle but were unsuccessful.

Based on defendant's consent, Investigator Dorrough searched defendant's truck. Underneath the driver's side door, he found the magnetized metal box containing drugs. The box was originally yellow, but black marker had been used to color the box.

Investigator Collazo then asked defendant if he could search his apartment where the surveillance began and defendant responded, "'Yeah. Go for it.'" Investigator Collazo indicated that at the time he asked for consent to search the apartment, defendant had not been handcuffed and was not in custody. Defendant's apartment was searched, revealing more drugs.

Defendant testified on his own behalf. He stated he was at the Tyler Lounge parking lot, but he did not meet anyone there. He went inside the bar and then came out. He saw headlights behind his truck. Defendant claimed that an officer appeared at his driver's side window and pointed a gun at his head. The officer said, "'Don't move or I'll blow your "F"-ing head off.'" Defendant was instructed by the officer to step out of his car. Defendant heard another car leaving the area. Defendant was instructed to put his hands on the top of his vehicle, and the officer searched him. Defendant was handcuffed and instructed to sit on a rock that was nearby.

Defendant did not give the officers consent to search his truck. They searched the truck anyway. Defendant claimed the officers drove his truck to his mother's house, where he claimed he was living at the time. They drove him to search the apartment on Jackson, but he did not live at that location. A friend of defendant's, who was in custody, lived at the apartment. Defendant told the officers he could not give them permission to

search the apartment because he did not live there, although he had the keys. Defendant claimed he had no knowledge of the box underneath the truck.

In argument, defendant claimed that under the officer's version of events, there was no time for a narcotics transaction to have been observed. This did not justify a detention. The trial court understood defendant's argument to be that the detention took place before the search occurred, and the detention was not supported by probable cause. Hence, since there was no detention, there was no voluntarily given consent. The People submitted on their written brief and the evidence presented at the hearing.

The trial court ruled: "[T]he only real decision I have to make here is the decision between believing the two police officers and believing the defendant. And I have no reason to doubt the word [of] the two officers. So the motion's denied."

B. *Analysis*

Here, defendant argues that he was detained and that there was no reasonable suspicion upon which to justify such detention. The People argue that the trial court properly found that the officers obtained defendant's consent to search during a consensual encounter, or, in the alternative, that there was reasonable suspicion to detain defendant.

"The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable. [Citation.] Thus, [the United States Supreme Court has] long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do

so. [Citation.]" (*Florida v. Jimeno* (1991) 500 U.S. 248, 250-251 [114 L.Ed.2d 297, 111 S.Ct. 1801]; accord, *People v. Jenkins, supra,* 22 Cal.4th at pp. 971, 974.) Determining whether consent to search was voluntarily given does not require proof of knowledge of the right to refuse consent. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 232-233 [36 L.Ed.2d 854, 93 S.Ct. 2041].) The court must look at all the individual circumstances of the encounter in determining whether consent was obtained voluntarily or through coercion. (*Id.* at p. 233.) However, if under all the circumstances it appears that the consent was not voluntarily given—that it was coerced by threats or force, or granted only in submission to a claim of lawful authority—then the consent is invalid and the search unreasonable. (*Ibid.*)

We view the evidence in the light most favorable to the trial court's findings to determine if there was substantial evidence to support the trial court's finding of voluntariness of consent. (*People v. Ratliff* (1986) 41 Cal.3d 675, 686.) "If there is conflicting testimony, we must accept the trial court's resolution of disputed facts and inferences, its evaluations of credibility, and the version of events most favorable to the People, to the extent the record supports them. [Citations.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 342.)

In concluding that defendant's consent was voluntary, the trial court found the testimony of Investigators Dorrough and Collazo to be credible.[11] Immediately upon seeing defendant engage in what appeared to be a hand-to-hand narcotics transaction, Investigators Dorrough and Collazo exited their unmarked patrol car and identified themselves as being from the sheriff's department. Both were in plain clothes and did not have their weapons drawn. Defendant voluntarily stepped out of his truck. Investigators Dorrough and Collazo announced they were conducting a narcotics investigation and asked defendant if they could search his truck. An officer merely informing a person that he is investigating a crime, without accusing the subject of criminal activity, does not create a detention. (*People v. Daugherty* (1996) 50 Cal.App.4th 275, 285; *People v. Lopez* (1989) 212 Cal.App.3d 289, 292-293 [no detention even though police officer asked somewhat accusatory questions].) The sheriff's deputies never informed defendant prior to obtaining his consent that they suspected he was carrying drugs. (Cf. *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 790 [when police tell suspect they believe he or she is carrying drugs, suspect does not feel free to leave].) Defendant immediately responded, "'Go ahead. You won't find anything.'" This all occurred within 30 seconds.

Defendant was being followed by Investigators Dorrough and Collazo because they believed he was carrying drugs. This does not render the actions of the officers to be

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[11] Although the trial court did not explain upon which theory it was approving the search, we can infer from the trial court's finding that it believed the officers' testimony that defendant's consent was voluntarily given, and there was no detention.

a detention of defendant. They could speak with defendant on the open street to further their investigation without necessarily detaining defendant. (*People v. Lopez, supra,* 212 Cal.App.3d at p. 293 [key question for voluntariness and detention is whether the person believes he or she is free to leave].)

After finding the metal box (which it is reasonable to assume took only a matter of seconds, since the officers knew what they were looking for), defendant was asked if they could search his apartment. He was not handcuffed. Defendant immediately responded, "'Yeah. Go for it.'" This evidence clearly supports that there was no detention and that the consent given by defendant was voluntary. It must be remembered that this was not defendant's first encounter with police (his apartment had been searched three weeks prior) and he clearly was aware that he could deny consent. Although defendant testified that he was handcuffed and that he was threatened by the officers, that issue was resolved against him by the trial court. We must accept the version most favorable to the People. (*People v. Zamudio, supra,* 43 Cal.4th at p. 342.)

Contrary to defendant's claim, the totality of the circumstances does not establish as a matter of law that defendant's consent to search his truck and apartment was coerced or otherwise involuntary.[12]

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[12] Since we conclude that defendant was not detained, we do not address the People's alternative theory that there was reasonable suspicion to detain him.

V

ON-BAIL ENHANCEMENT

Defendant also contends that the Penal Code section 12022.1 on-bail enhancement must be stayed because he did not admit he had been convicted of a primary offense as required by the statute, and no proof was presented regarding the primary offense at sentencing. The People contend that defendant cannot raise this issue on appeal because he failed to obtain a certificate of probable cause as required under Penal Code section 1237.5.

In both informations, the on-bail enhancement was charged under Penal Code section 12022.1, but no primary offense was designated. Defendant admitted he was on bail at the time he committed all of the felony offenses in this case.

A guilty plea admits every element of an admitted offense and enhancement. (*In re Chavez* (2003) 30 Cal.4th 643, 649; *People v. Thomas* (1986) 41 Cal.3d 837, 844; *People v. Watts* (2005) 131 Cal.App.4th 589, 594-595.) Only limited issues are therefore reviewable after a guilty plea, and to obtain such review a certificate of probable cause from the trial court authorizing the appeal must first be obtained. (*Chavez,* at pp. 650-651.)

Penal Code section 1237.5 provides: "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed

under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court."

"After [a guilty] plea the only issues which may be considered on appeal are those based upon constitutional, jurisdictional, or other grounds going to the legality of the proceedings and those only when the statutory requisites of Penal Code section 1237.5 are fulfilled. [Citations.]" (*People v. Padfield* (1982) 136 Cal.App.3d 218, 224, fn. omitted.) Claims of the sufficiency of the evidence are not cognizable following a guilty plea. (*People v. Moore* (2003) 105 Cal.App.4th 94, 99.)

We agree with the People that defendant's failure to obtain certificate of probable cause bars his appeal on this issue. Defendant's claim challenges both the validity of his plea and specific negotiated sentencing terms of his plea bargain rather than sentencing choices left to the discretion of the court.

Defendant claims he did not need to obtain a certificate of probable cause because his claim is raising a "point of law about how the enhancement that he admitted to operates." We are unsure what defendant intends by this argument. He appears to be arguing that the People's pleading was defective because it did not designate the "primary offense," which he claims was required by the statute.

Penal Code section 12022.1, subdivision (b) provides as follows: "Any person arrested for a secondary offense which was alleged to have been committed while that

person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years in state prison which shall be served consecutive to any other term imposed by the court." An "on-bail" enhancement under Penal Code section 12022.1, subdivision (c) "shall be pleaded in the information or indictment" on the secondary offense and can be "imposed only once in a particular case." (*People v. Augborne* (2002) 104 Cal.App.4th 362, 377.)

We have found nothing that requires that the *primary offense* be pled in the information, and defendant provides nothing more than the statute to support his claim. Certainly, the People would be required to prove the primary offense at trial, which was not necessary in this case as defendant admitted the allegation, but that does not require that they cite to the primary offense. Defendant was on notice based on the informations pleading the Penal Code section 12022.1 enhancement. Defendant is essentially arguing that the evidence was insufficient to support the on-bail enhancement, a clear certificate issue that need not be addressed here.

VI

ABSTRACT OF JUDGMENT

Although not raised by either party, our review of the record reveals that the minute order from the sentencinghearing and the abstract of judgment do not reflect the orally imposed sentence. As set forth, *ante*, defendant's 20-year sentence consisted of sentence of four years on the principal term, count 9 (import/sale/distribution of methamphetamine pursuant to Health & Saf. Code, § 11379, subd. (a)), doubled for the

one strike, for a total of eight years, plus three years for the Health and Safety Code section 11370.2, subdivision (c) violation, plus two years for the on-bail enhancement, plus five years for five of the prison term priors, for a total of 18 years. The trial court then imposed a consecutive sentence of two years on count 2. Sentences on the remaining offenses were ordered to run concurrent to counts 2 and 9.

The abstract of judgment incorrectly states that defendant was sentenced to the prior drug offense enhancement under Health and Safety Code section 11370.2, subdivision (c), on count 1 and the on-bail enhancement pursuant to Penal Code section 12022.1 on count 4. The minute order for the date of sentencing, September 9, 2009, also improperly reflects the sentence. Since this conflicts with the oral pronouncement of sentence, we can correct this purely clerical error for the first time on appeal. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) As such, we will order that the abstract of judgment and the minute order be corrected to reflect the properly imposed sentence.

VII

DISPOSITION

The judgment is affirmed. The superior court is directed to prepare an amended minute order for September 9, 2009, to reflect that the Health and Safety Code section 11370.2, subdivision (c), enhancement and the on-bail enhancement pursuant to Penal Code section 12022.1 was imposed on count 9, not counts 1 and 4. The court is also ordered to prepare and forward to the Department of Corrections and Rehabilitation a corrected abstract of judgment striking the enhancements pursuant to Health and Safety

Code section 11370.2, subdivision (c) on count 1 and the on-bail enhancement pursuant to Penal Code section 12022.1 on count 4, and properly reflect the enhancements were imposed on count 9.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

I concur:

McKINSTER
Acting P.J.

KING, J., Concurring and dissenting.

I concur with the majority in all respects, save and except as it relates to the parole search of the Central Avenue house. Based on the evidence presented at the Penal Code section 1538.5 motion, I would find the warrantless search invalid.

The People seek to uphold the search based on the parole status of Obie Combs. In order to do so, the burden rests with the People to demonstrate that Combs was actually on parole or that the officers had a good faith belief that he maintained that status. (See *People v. Willis* (2002) 28 Cal.4th 22 (*Willis*); *People v. Pearl* (2009) 172 Cal.App.4th 1280.) The People have shown neither.

The People concede there is no admissible evidence that Combs was actually on parole. The issue thus becomes whether there is sufficient evidence to support a good faith belief on the part of the officers that Combs was, in fact, on parole. The court in *Willis* stated: "[I]n determining whether the good faith exception applies, '[i]t is necessary to consider the objective reasonableness, not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it or who provided information material to the probable-cause determination.' [Citation.]" (*Willis, supra,* 28 Cal.4th at p. 31.) Here, the law enforcement individual who originally supplied the information that Combs was on parole and resided at the Central Avenue residence was not called to testify. He or she is simply identified in the record as the "officer of the

day," associated with the Riverside parole office.[1] The record provides no admissible evidence of who that officer was or how he or she determined that Combs was on parole. Thus, the record fails to provide sufficient foundation as to the objective reasonableness of the determination that Combs was on parole and resided at the Central Avenue residence. In the absence of these facts, the record does not support the application of the good faith exception. (See *People v. Pearl, supra,* 172 Cal.App.4th at p. 1293.)

As stated in *In re Eskiel S.* (1993) 15 Cal.App.4th 1638: "'[W]hile it may be perfectly reasonable for officers in the field to make arrests on the basis of information furnished to them by other officers, "when it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness."' [Citations.] 'To hold otherwise would permit the manufacture of reasonable grounds for arrest within a police department by one officer transmitting information purportedly known by him to another officer who did not know such information, without establishing under oath how the information had in fact been obtained by the former officer.' '[W]hen an officer furnishes to another officer information which leads to an arrest, the People must show the basis for the former officer's information.' [Citation.]" (*Id.* at pp. 1642-1643, quoting *Remers v. Superior Court* (1970) 2 Cal.3d 659, 666-667; see also *Herring v. United States* (2009) 129 S.Ct. 695 [wherein the court extensively discussed the conduct

[1] A parole officer is part of or an adjunct of the "law enforcement team" as it relates to the transmittal of information justifying a parole search. (See *Willis, supra,* 28 Cal.4th at p. 39.)

of the underlying sources in obtaining the information which was eventually transmitted to the arresting officer in the field].)

Because our record does not maintain the proper foundational evidence, I would find the present parole search illegal.

/s/ King
J.